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Supreme Court of the United States

OCTOBER TERM, 1994

CAPITOL SQUARE REVIEW AND ADVISORY BOARD, RONALD T. KELLER, DANIEL SHELLENBARGER, and OHIO SENATOR RICHARD T. FINAN,
Petitioners,

v.

VINCENT J. PINETTE, DONNIE A. CARR, and KNIGHTS OF THE KU KLUX KLAN,
Respondents.

On Writ of Certiorari to the Sixth Circuit Court of Appeals

BRIEF OF LIBERTY COUNSEL AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE

Amici Curiae file this brief in support of Respondents. The Specific statements of Amici Curiae are set forth in Appendix B.[1]

SUMMARY OF ARGUMENT

Capitol Square is a traditional public forum open for expressive activities. Historical, secular and religious expression occurs in Capitol Square including the display of free-standing objects. The year prior to the incident leading to this case, the Governor, himself, dedicated a religious Menorah in Capitol Square. The State of Ohio actually approved the display of the Menorah and a Christmas tree, but disapproved of the Klan's cross primarily because the State is opposed to the Klan's message. The State excluded only the Klan's cross, but allowed the display of the Christmas tree and the Menorah, arguing that the Menorah was not religious and that the State was compelled to exclude the Klan's cross because it was religious. In an open forum, the government may not exclude religious speech on the basis that to allow such speech would violate the Establishment Clause. In an open forum, the Establishment Clause is not even implicated. To the contrary, in an open forum the Establishment Clause is violated when the government excludes religious speech solely because of the content. To exclude such speech is both a violation of the Free Speech Clause and the Establishment Clause. In this case, the State further violated the Establishment Clause by preferring one religion (Jewish Menorah) over another religion (Klan's cross).

The cross has differing meanings to various observers, both secular and sectarian. In an open forum, the government need not entangle itself with whether the Christian symbol has become sufficiently secularized, because religious speech can not be excluded no matter how secular or sectarian.

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[1] Amici Curiae file this brief with the consent of all parties. Letters of consent have been filed with the Clerk of the Court pursuant to Rule 36.2 of the Rules of this Court.

Finally, the selective exclusion of the Klan's cross while allowing secular and other sectarian speech, violates the Klan's free exercise rights. The display of the cross is part of the Klan's sincerely-held religious belief and selective exclusion of that sectarian view while allowing secular and other sectarian speech violates the Klan's freedom of religion.

ARGUMENT

I.

SPEAKERS WITH A RELIGIOUS MESSAGE ARE ENTITLED THE SAME ACCESS TO TRADITIONAL PUBLIC FORA AS SPEAKERS WITH A SECULAR MESSAGE.

A. Private Religious Speech In A Traditional Public Forum Does Not Implicate The Establishment Clause.

The First Amendment Free Speech Clause protects the free flow of ideas in a democratic society. The right to free speech lies "at the foundation of free government by free men." *Arlington County Republican Committee v. Arlington County*, 790 F. Supp. 618, 621 (E.D. Va. 1992) (quoting *Schneider v. State*, 308 U.S. 147 (1939)). "The constitutional right of free expression is . . . intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us . . . in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests." *Simon & Schuster v. New York Crime Victims Board*, 112 S. Ct. 501, 508 (1991).

"To ascertain what limits, if any, may be placed on protected speech, [this Court has] often focused on the place of that speech, considering the nature of the forum the speaker seeks to employ." *Frisby v. Schultz*, 487 U.S. 474, 479 (1988). *See also Heffron v. ISKCON*, 452 U.S. 640 (1981) (hereinafter "*Heffron*");

United States v. Kokinda, 497 U.S. 720 (1990). Indeed,

> [p]ublic places are of necessity the locus for discussion of public issues, as well as protest against arbitrary government action. At the heart of our jurisprudence lies the principle that in a free nation citizens must have the right to gather and speak with other persons in public places. The recognition that certain government owned property is a public forum provides open notice to citizens that their freedoms may be exercised there without fear of a censorial government, adding tangible reinforcement to the idea that we are a free people.

ISKCON v. Lee, 112 S. Ct. 2711, 2716-2717 (1992) (Kennedy, J., concurring) (hereinafter "*ISKCON*").

Parks, public streets and sidewalks "have immemorially been held in trust for the use of the public . . . and are properly considered traditional public fora." *Frisby*, 487 U.S. at 480-481. *See also Perry Education Ass'n. v. Perry Local Educators' Ass'n.*, 460 U.S. 37, 45 (1983). "The purpose of the public forum doctrine is to give effect to the broad command of the First Amendment to protect speech from governmental interference." *ISKCON*, 112 S. Ct. at 2717 (Kennedy, J., concurring). This Court has stated:

> In these quintessential public fora, the government may not prohibit all communicative activity. For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end . . . . The State may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

Frisby, 487 U.S. at 481 (quoting *Perry Education Ass'n.*, 460 U.S. at 37).

This Court has acknowledged the right of religious speakers to use public forums on equal terms with others.[2] *See Widmar v. Vincent*, 454 U.S. 264, 272 n.12 (1981); *Tilton v. Richardson*, 403 U.S. 672 (1971); *ISKCON*, 452 U.S. at 640; *Saia v. New York*, 334 U.S. 558 (1948). Even though "public debate of religious ideas, like any other, may arouse emotion, may incite, may foment religious divisiveness and strife does not rob it of constitutional protection." *McDaniel v. Paty*, 435 U.S. 617, 640 (1978)(Brennan, J., concurring); *see also Terminiello v. Chicago*, 337 U.S. 1, 4-5 (1949); *Cantwell v. Connecticut*, 310 U.S. 296, 309-310 (1940). The mere fact that the government wishes to reduce or eliminate religious strife and entanglement "does not place religious discussion, association, or political participation in a stratus less preferred than rights of discussion, association, and political participation generally." *McDaniel*, 435 U.S. at 640 (Brennan, J., concurring). "Adherents of particular faiths and individual churches frequently take strong positions on public issues including . . . vigorous advocacy of legal or constitutional positions. Of course, churches as much as secular bodies and private citizens have that right." *Walz v. Tax Comm'n*, 397 U.S. 664, 670 (1970).

Capitol Square is a traditional public forum. *See* Petition for Certiorari (hereinafter "P.C.") 4,5, A2, A14, A28; Respondents' Brief in Opposition to Petition for Certiorari (hereinafter "R.B.") 3 n.5, 4. Petitioners do not dispute this public forum designation. P.C. 3, 18; Petitioners' Reply Brief to Res. Opposition to Petition

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[2] The Fourteenth Amendment is also implicated because the State's action is content-based. *See, e.g., Burson v. Freeman*, 112 S. Ct. 1846 (1992); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Coates v. City of Cincinnati*, 402 U.S. 611 (1971).

for Cert. (hereinafter "P.R.B.") 1, 2.[3] The State of Ohio owns Capitol Square and erected the State's capitol building (hereinafter "Statehouse") on that property. P.C. 4, 5, A2, A14, A28. Capitol Square is located in downtown Columbus, Ohio. P.C. 4, 5, A2, A14, A28. For more than a century the Statehouse has housed both chambers of the Ohio General Assembly as well as the offices of the Governor and other statewide officeholders. P.C. 4, 5, A2, A14, A28. Capitol Square grounds are made available for speeches and public gathering by groups advocating various causes, both secular and religious. P.C. 4, 5, A16, A30; P.R.B. 6.[4] Capitol Square has also been used for unattended displays. P.C. A16, A30; P.R.B. 6. These include a State-sponsored Christmas tree and a free standing Menorah[5] sponsored by the Lubavitch sect. P.C. 5, 30; R.B. 3,4,7, A13. The Menorah is a nine-armed candelabrum that serves as the primary symbol of the Jewish holiday of Hanukkah. This Court in *Allegheny* stated that "[t]he menorah . . . is a religious symbol." *Allegheny*, 492 U.S. at 613.[6]

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[3] "Capitol . . . grounds are available for use by the public . . . for free discussion of public questions . . . ." Ohio Administrative Code § 128-04-02(A).

[4] During hearings, evidence revealed that political speeches, gay rights demonstrations, anti-war demonstrations and other demonstrations regarding various types of public issues were routinely permitted on Capitol Square, as well as booths and other displays erected during art festivals, a united campaign "thermometer," the State Christmas tree and the Menorah. R.B. A15-A16.

[5] This free-standing Menorah had no disclaimer and was dedicated by Ohio's Governor in 1993. *See* R.B. A23. (Governor dedicating menorah. Plaintiffs' Supplemental Exhibit No. 101).

[6] Cantor Jack Chomosky of Tifereth Israel Congregation in Columbus, Ohio, testified as an expert that the Menorah permitted by the State of Ohio, like other Chanukah Menorahs, "is a religious symbol. It is used in conjunction with fulfilling the obligations incumbent upon a Jew for the celebration of Chanukah." *See* R.B. 8. Further, Mr. Chomosky took "exception" to the State's contention that the Menorah was a seasonal

Petitioners argue that excluding religious speech in the form of displays is necessary in order to abide by the Establishment Clause. P.C. 3, 9, 11, 24, A15; P.R.B. 6, 8. However, nothing could be further from the truth. The "State's goal of preventing sectarian bickering and strife may not be accomplished by regulating religious speech and political association." *McDaniel*, 435 U.S. at 640 (Brennan, J., concurring); *see also*, P.R.B. 5. The fact that the Klan's "public debate of religious ideas, like any other, may arouse emotion, may incite, may foment religious divisiveness and strife does not rob it of constitutional protection." *McDaniel*, 435 U.S. at 640 (Brennan, J., concurring); *see also Cantwell*, 310 U.S. at 309-310; cf. *Terminiello*, 337 U.S. at 4-5; R.B. 5.

Petitioners fear that the "public forum doctrine would swallow up the Establishment Clause." P.C. 3; P.R.B. 8. This argument has already been addressed and disposed of in *Widmar*. In that case, eleven students of the University of Missouri at Kansas City brought suit to challenge a University regulation prohibiting a religious group from meeting in University facilities on equal terms with other students' organizations. *Id.* at 265-66. Unlike the case at hand, the University was not a traditional public forum. *Id.* at 267-268; P.C. 3, 18; P.R.B. 1, 2. Nonetheless, this Court announced that "[t]he Constitution forbids a State to enforce certain exclusions from a forum generally open to the public, even if it was not required to create the forum in the first place." *Widmar*, 454 U.S. at 267-268. This Court noted that religious worship and discussion "are forms of speech and association protected by the First Amendment," *Id.* at 269, and "[i]n order to justify discriminatory exclusion from a public forum based on the religious content of a group's intended speech, the University . . . must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Id.* at 269-70.

The University in *Widmar*, like the Petitioners in this case, claimed that the discriminatory exclusion of religion was based on

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display and "not a religious symbol." *See* R.B. 8.

the University's compelling interest in abiding by the Establishment Clause. P.C. 9, 11, 24, A15; P.R.B. 6; *see also Widmar*, 454 U.S. at 271-72. This Court dismissed the argument by explaining that on an open-forum policy, ensuring nondiscrimination against religious speech is a secular purpose and avoids entanglement with religion. *Widmar*, 454 U.S. at 271-72.

This Court has prescribed the "reasonable observer's" standard to determine whether a display gives the appearance of government endorsement. *See Allegheny*, 492 U.S. at 620; *Witters v. Washington Dept. of Services for the Blind*, 474 U.S. 481, 493 (1986) (O'Connor J., concurring in part and concurring in judgement). This endorsement test

> is not based on perceptions of the ill-informed, first-time visitor who simply views a religious symbol in a government building without regard to public forum issues . . . "This hypothetical observer is informed as well as reasonable; we assume that he or she is familiar with the history of the government practice at issue, as well as with the general contours of the Free Speech Clause and the public forum doctrine. . . . Our observer realizes that [the public fora at issue] host an eclectic range of uses throughout the year."

Chabad-Lubavitch of Georgia v. Miller, 5 F.3d 1383, 1391 n.11 (11th Cir. 1993) (en banc) (quoting *Kreisner v. City of San Diego*, 988 F.2d 883, 892 (9th Cir. 1993)). A reasonable observer viewing a private, religious, unattended display in a public forum would not perceive such display as an "endorsement" or "disapproval" of their individual religious choices. *See Allegheny*, 492 U.S. at 620; *Witters*, 474 U.S. at 493 (O'Connor J., concurring in part and concurring in judgement). For purposes of the Establishment Clause, allowing the Klan's religious display conveys a message of

openness and plurality to all observers.[7] *See Allegheney*, 492 U.S. at 620; *Witters*, 474 U.S. at 493 (O'Connor J., concurring in part and concurring in judgement).

Furthermore, this Court stated that the primary effect of an open forum does not advance religion because "an open forum in a public university does not confer any imprimatur of state approval on religious sects and practices." *Widmar*, 454 U.S. at 274. Private religious speech in a traditional public forum cannot violate the Establishment Clause because it does not even implicate the Clause. *See Widmar*, 454 U.S. at 273-74; *see also McDaniel*, 435 U.S. at 640 (Brennan, J., concurring). If anything, an open forum policy prevents violations of the Establishment Clause by insulating the government from the necessity of scrutinizing the content of the citizenry's speech. *See Widmar*, 454 U.S. at 277-78; *Chabad-Lubavitch of Georgia*, 5 F.3d at 1391. Petitioners do not have a compelling state interest. As such, Petitioners' content-based discrimination against the Klan's cross is a violation of the Free Speech Clause.

B. Selective Exclusion Of A Privately Sponsored Cross In A Traditional Public Forum Is An Unconstitutional Content And Viewpoint-Based Restriction.

1. Allowing secular speech but prohibiting religious speech is a content-based restriction.

In *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992), this

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[7] Lower courts have cautioned against the "Ignoramus's Veto." "The Ignoramus's Veto lies in the hands of those determined to see an endorsement of religion, even though a reasonable person, and any minimally informed person, knows that no endorsement is intended, or conveyed, by adherence to the traditional public forum doctrine." *Americans United for Separation of Church and State v. City of Grand Rapids*, 980 F.2d 1538, 1553 (6th Cir.1992) (en banc); *see also Chabad-Lubavitch of Georgia*, 5 F.3d at 1391 n.11.

Court noted that "[t]he First Amendment generally prevents government from proscribing speech, or even expressive conduct because of disapproval of the ideas expressed. Content-based regulations are presumptively invalid." *Id.* at 2542. "The First Amendment does not permit [government] to impose special prohibitions on those speakers who express views on disfavored subjects." *Id.* at 2547.

"If there is a bedrock principle underlying the First Amendment, it is that Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Simon & Schuster*, 112 S. Ct. at 509; *see also Cohen v. California*, 403 U.S. 15 (1971).[8] Selective exclusion from a public forum may not be based on content alone, and may not be justified by reference to content alone. *See Carey v. Brown*, 447 U.S. 455, 462-463; *Police Dept. of the City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972); *Texas v. Johnson*, 491 U.S. 397, 414 (1989). "Regulations which permit the government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Simon & Schuster*, 112 S. Ct. at 508. Content-based regulations of speech constitute "censorship in a most odious form" and violates the First Amendment. *Cox v. Louisiana*, 379 U.S. 536, 581 (1965) (Black, J. concurring). Education is the proper and preferable alternative

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[8] *Cohen* involved the wearing of a shirt in a public forum with the words "Fuck the Draft." In overturning a criminal conviction based upon a breach of the peace for the wearing of the shirt, this Court noted that the State acted as it did in order to protect the sensitive from otherwise unavoidable exposure to a crude form of protest. "Of course, the mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense. While this Court has recognized that government may properly act in many situations to prohibit intrusion into the privacy of the home of unwelcome views and ideas which cannot be totally banned from the public dialogue, we have at the same time consistently stressed that we are often captives outside the sanctuary of the home and subject to objectionable speech." *Cohen*, 403 U.S. at 21.

to censorship. *Whitney v. California*, 274 U.S. 357 (1927).

> But, above all else, the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter or its content. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the "profound national commitment to the principles that debate on public issues should be uninhibited, robust and wide open."

Mosley, 408 U.S. at 95-96 (citations omitted).[9]

Petitioners agree that Capitol Square is a public forum. P.C. 3, 18; P.R.B. 1, 2. As such, speech within Capitol Square must be afforded the protections of the First Amendment. Nonetheless, Petitioners wish to differentiate displays from the speeches and gatherings the State has traditionally allowed at this public forum. P.C. 5, 10, 11, 15, 16, 21; P.R.B. 3. Nowhere do Petitioners' argue that religious speech in the form of religious worship, celebrations, speeches, or ceremonies must be excluded from Capitol Square. In fact, Petitioners have allowed such an exercise of religious speech by the Lubavitch sect in celebration of Hanukkah in Capitol Square during previous years. R.B. A14. On those occasions the State did not claim that there had been a violation of the Establishment Clause by allowing an unattended Menorah (P.C. 5, 14, A16, A30; P.R.B. 3, 6.) or the religious celebration of Hanukkah on Capitol Square even though the Governor dedicated the Menorah in 1993 in an open ceremony. R.B. A23. Nonetheless, Petitioners make the fictitious differentiation among displays and religious worship or celebration.

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[9] "Regulations which permit the government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Simon & Schuster*, 112 S. Ct. at 508.

P.C. 5, 14, A16, A30; P.R.B. 3, 6.[10]

Display of the Klan's cross and its disclaimer constitute religious/political speech protected under the First Amendment. Assuming, *arguendo*, that Respondents' display is somehow different from religious worship or celebration it does not follow that the cross deserves less protection. Though the government generally has a freer hand in restricting expressive conduct, it may not proscribe particular conduct because it has expressive elements. *See, e.g., Johnson*, 491 U.S. at 406; *United States v. O'Brien*, 391 U.S. 367, 376-377 (1968). This Court has acknowledged that conduct may be "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendment." *Spence v. Washington*, 418 U.S. 405, 409 (1974). Conduct is protected under the First Amendment if it conveys a particularized message. *See id.*; *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 505 (1969) (Court recognized the expressive nature of students wearing black arm bands to protest American military involvement in Viet Nam); *Brown v. Louisiana*, 383 U.S. 131, 141-142 (1966) (Court recognized expressive conduct of a sit-in by blacks in a "white only" section to protest segregation).

Like the flag in *Texas v. Johnson*, the cross is a form of utterance. *See Johnson*, 491 U.S. at 405. "Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind. Causes and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design." *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 632 (1943) (Forced salute of the flag was forced expression). The cross

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[10] Petitioners state "[t]hat distinction, though perhaps obvious enough in the context of particular visible speakers, lacks the same clarity when one considers an unattended display that does not itself articulate the nature of its connection to the government except by its contents and its location, especially when it is located at the very seat of government." P.B. 16.

in this case is pregnant with expressive content. The cross not only embodies significance to religious belief but it also embodies a political message due to the accompanying sign which read (1) "cross was erected by private individuals," (2) "without government support," (3) "for the purpose of expressing respect for the holiday season," (4) "to assert the right of all religious views to be expressed on an equal basis on public property." P.C. A15; P.R.B. 5; R.B. 8, A15, A16. Therefore, the expressive and overtly political and religious nature of this display was both intentional and overwhelmingly apparent. *See Spence*, 418 U.S. at 409; *Tinker*, 393 U.S. at 505; *Brown*, 383 U.S. at 141-142.

A ban on religious expression in a public forum, even if limited to a ban on expression through signs and symbols, would lead to impossible difficulties as indicated by various lower court decisions. *See, e.g., Americans United for Separation of Church and State*, 980 F.2d at 1552. Such a ban would have to extend to anti-religious expression as well.[11] *See id.* at 1552-1553; *see also Wallace v. Jaffree*, 472 U.S. 38, 52-54 (1985). Petitioners cite *Gonzales v. North Township*, for the proposition that the cross "does not bear secular trappings sufficient to neutralize its religious message." P.B 22 (quoting *Gonzales*, 4 F.3d 1412 (7th Cir. 1993) (Crucifix had been donated to the city, and thus had become city property)). Petitioners fail to recognize that private religious speech in a traditional public forum cannot violate the Establishment Clause because it does not even implicate the Clause. *See Widmar*, 454 U.S. at 271-72.

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[11] For example, under Petitioners' arguments, a cross, and specifically a Latin cross by itself, could be banned, but a cross with a Red Ribbon, which is the symbol of AIDS awareness, may not be banned. Also, as stated in *Americans United for Separation of Church and State*, "a banner reading 'Cure AIDS, smash the Catholic Church' would be banned, while one reading 'Cure AIDS, support research' could not be banned." 980 F.2d at 1552-1553. The Klan's cross would be banned, but a burning cross would not be banned because of its overtly political message similar to burning the flag in *Texas v. Johnson*, 491 U.S. at 406.

Petitioners' proposition, if nothing else, demonstrates that the state's action was content-based. The State would prohibit religious symbolic speech because it cannot "neutralize its **religious message**." P.C. 22 (emphasis added). The State desires to prohibit only one class of speech -- religious speech. P.C. 22; *see also*, P.C. 3, 5 n.1, 6, 9, 14, 16, 17, A30. Petitioners' argument requires "sanitation" of religious speech, which is an euphemism for censorship. P.C. 22. The Establishment Clause cannot place such a heavy burden on free speech.

2. Allowing one brand of religious speech but prohibiting another brand of religious speech is a viewpoint-based restriction.

"[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includable subject." *Cornelius v. NAACP Legal Defense and Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985). The principle that has emerged from this Court's decisions is "that the First Amendment **forbids** the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984) (emphasis added); *Lamb's Chapel v. Center Moriches School Dist.*, 113 S. Ct. 2141, 2147-2148 (1993) (Permitting discussions on family issues, but prohibiting religious discussions of family issues is viewpoint restriction). Like *Lamb's Chapel*, the State engaged in view point discrimination when it allowed Capitol Square to be used as a public forum for the presentation of all views about politics and religion except the Klan's views. *See* P.C. 4, 5, 14, A2, A14, A30; *see also, Lamb's Chapel*, 113 S. Ct. at 2147-2148.

The State engaged in viewpoint discrimination when it allowed the religious speech of a minority religious group, the Lubavitch sect, but excluded the religious/political speech of the Klan. P.C. 14, A30; P.R.B. 10; R.B. 4, 8. The State contends that the Klan's cross would give the impression of government sponsorship. P.C. 14, 19, 24; P.R.B. 10, 8. The cross had a

disclaimer (P.C. A15; P.R.B. 5; R.B. A15, A16), and was never alone in Capitol Square (P.C. 5, A15, A30, A31; R.B. 5, 15, A23, A24, A25, A31, A32). The State made a point in disclaiming its support of the cross (R.B. A12, A14, A15), and had previously condemned the Klan's cross. R.B. A12, A14, A15. At the same time, the State allowed an unattended Menorah without a disclaimer (P.C. A30; R.B. A23) which Menorah had been dedicated by the Governor in 1993 as part of a Hanukkah celebration. R.B. 15, A23. These facts indicate that the motive behind the State's ban of the cross was to exclude the religious/political and highly controversial views of the Klan. R.B. A11 (Senator Finan on a broadcast by Ohio Public Radio stated that "[w]e would love to have a basis for denying the Klan the right to come here"), A17. The State was aware of the Klan's previous attempts in Cincinnati to erect a cross after a menorah had been displayed. R.B. 5, A12, A13, A17, A22.[12] In fact, a closer look into the original banning of all seasonal displays reveals the State's intent was to prevent the Klan from erecting the cross. R.B. 5, A12, A13, A17, A22.[13] After the public's disapproval of the total ban of seasonal displays, the State gave in and allowed those displays which had popular approval. R.B. 5, A14, A20.

Petitioners contend that Respondents' openly acknowledged purpose -- to erect "a symbol for our Lord, Jesus Christ" in furtherance of their more general purpose to "establish a Christian

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[12] "Senator Finan said he wanted to avoid having Columbus go through what Cincinnati went through last year and may go through again this year. Last holiday season, after a tree and menorah were put up in a public square in the queen city, the Klan went to court for a ruling to allow them to erect a 15-foot tall cross . . . Senator Finan stated this year no holiday symbols will be allowed at the Statehouse, and, that way, the Klan won't get its symbol in the door either." R.B. A12 (emphasis added).

[13] State Senator Richard Finan stated: "We could keep the Ku Klux Klan off the Statehouse grounds, all we have to do is bar everybody else. We are not prepared to do that. It's a little easier to bar a holiday tree than it is to bar everybody from the Statehouse." R.B. A13.

government in America" -- is somehow evidence of why the Klan's display must not be allowed. P.C. 4; P.R.B. 5. If anything, the State's hostility toward the Klan's purpose demonstrates that the prohibition of the Klan's brand of religious/political speech was a viewpoint-based restriction. The State's actions are a paramount example of unconstitutional restrictions on speech and expressive conduct because of disapproval of the ideas expressed. *See Lamb's Chapel*, 113 S. Ct. at 2147-2148; *Taxpayers for Vincent*, 466 U.S. at 804.

II.

SELECTIVE EXCLUSION OF RELIGIOUS SPEECH FROM A TRADITIONAL PUBLIC FORUM VIOLATES THE ESTABLISHMENT CLAUSE.

A. Allowing The Private Display Of A Jewish Menorah While Flatly Banning The Private Display Of A Klan Cross Violates The Establishment Clause.

Through an extensive line of cases, this Court has interpreted the Establishment Clause to mean that "government may not promote or affiliate itself with any religious doctrine or organization." *Edwards v. Aguillard*, 482 U.S. 578 (1987) (Public school's curriculum may not be based on a desire to promote religious beliefs); *Stone v. Graham*, 449 U.S. 39 (1980); *Abington School District v. Schempp*, 374 U.S. 203 (1963); *see also Engel v. Vitale*, 370 U.S. 421; 82 S. Ct. 1261 (1962). The government may not discriminate among persons on the basis of their religious beliefs and practices. *Torcaso v. Watkins*, 367 U.S. 488 (1961) (Statute that conditions the holding of public office on a belief in the existence of God is unconstitutional); *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709-710, and n.9 (1985) (Statute granting an employee a right not to work on his Sabbath unconstitutional); *Larson v. Valente*, 456 U.S. 228 (1982) (Statute that imposed registration and reporting requirements upon only those religious organizations that solicit more than 50% of their funds from

nonmembers is unconstitutional). Moreover, the government may not delegate governmental power to a religious institution, and may not involve itself too deeply in such an institution's affairs. *See, e.g., Board of Education of Kiryas Joel v. Grumet*, 114 S. Ct. 2481, 2488, 2494 (1994); *Aguilar v. Felton*, 473 U.S. 402, 409 (1985); *Wolman v. Walter*, 433 U.S. 229, 254 (1977); *Meek v. Pittenger*, 421 U.S. 349, 370 (1975); *Lemon v. Kurtzman*, 403 U.S. 602, 619-622 (1971).

Government cannot pick and choose among religious beliefs. Preference for particular religious beliefs constitutes an endorsement of religion, and thus a violation of the Establishment Clause. *See County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 593 (1989); *Edwards*, 482 U.S. at 593; *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334 (1987). "The fullest realization of true religious liberty requires that government . . . effect no favoritism among sects or between religion and nonreligion." *Abington School District*, 374 U.S. at 305 (Goldberg, J., concurring).

Here, like *Kiryas Joel*, 114 S. Ct. at 2492, the benefits flow to one single sect, Lubavitch. *See* R.B. 4. Aiding this "single, small religious group causes no less constitutional problem than would follow from aiding a sect with more members or religion as a whole." *Kiryas Joel*, 114 S. Ct. at 2492; *see Larson*, 456 U.S. at 244-246. The State's ban of the Klan's cross because it is "a strictly religious, indeed sectarian, symbol," (P.C. 3, 5 n.1, 6, 9, 16, 17) but allowing a Jewish Menorah with no disclaimer, by the Lubavitch sect, gives preferential treatment to one religion over another in violation of the Establishment Clause. *See County of Allegheny*, 109 S. Ct. at 3101; *Edwards*, 482 U.S. at 593. The State's actions give the improper appearance of endorsement to the Jewish Faith and nonendorsement, even hostility, toward Klan Christianity. *See Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring); *Lemon*, 403 U.S. at 612. The State's ban on the Klan's cross conveys a message to Klan Christians that they are not full members of the political community; that they can display their crosses in their property and inside their temples, but

not in a public forum like other sects do. Petitioners' accommodation to the Lubavitch sect singles out a particular religious sect for special treatment. However, "whatever the limits of permissible legislative accommodations may be, . . . it is clear that neutrality as among religions must be honored." *Kiryas Joel*, 114 S. Ct. at 2493 (citations ommitted); *Larson*, 456 U.S. at 244-246. The State's actions send the message that anyone will be allowed to erect displays in Capitol Square, except Klan Christians trying to display "religious symbols."

B. Allowing Secular Speech In A Traditional Public Forum While Selectively Excluding Religious Speech Violates The Establishment Clause.

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, **religion**, or other matters of opinion or for citizens who confess by word or act or faith herein." *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added). "The Establishment Clause, properly understood, is a shield against any attempt by the government to inhibit religion" as it has done here by allowing secular but not religious speech. P.C. 3, 4, 5, 18, A16, A30; *see McDaniel*, 435 at 641 (Brennan, J., concurring); *Abington School Dist.*, 74 U.S. at 222. The Establishment Clause may not be used as a sword to justify repression of religion or its adherents from any aspect of public life, including the free exercise of their religious belief in public. *See McDaniel*, 435 U.S. at 641 (Brennan, J., concurring).

This Court in *Lemon v. Kurtzman* prescribed the following three-prong test in determining whether a policy violates the Establishment Clause: (1) it must have a secular purpose; (2) its principal or primary effect would be neither to advance nor inhibit religion; and (3) it must not foster excessive governmental entanglement with religion. 403 U.S. at 612-613; *see also Widmar*, 454 U.S. at 271. In *Widmar* this Court found that an "equal access" policy meets the first and third parts of the test, and that any advancement of religion would not be the forum's "primary effect"

under the second prong. 454 U.S. at 271-275. Private religious speech in a traditional public forum does not implicate the Establishment Clause. *See id.* To exclude religious speech from a public forum offends the *Lemon* test. *See Widmar*, 454 U.S. at 271.

This Court has never before held that "the Government may ensure that a symbol be used to express only one view of that symbol or its referents." *Texas v. Johnson*, 491 U.S. at 417. Indeed, in *Schacht v. United States*, this Court invalidated a federal statute that permitted a member of one of the armed forces to wear the uniform of that armed force so long as the portrayal does not discredit that armed force. 398 U.S. 60, 65 (1970). Like the government in *Schacht*, Capitol Square cannot adopt a "preference for the dissemination of religious ideas." *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 17 (1989).[14] The same analysis applies to the cross. Courts cannot engage in speculation as to when a cross exclusively embodies a religious message, especially when the speech is private speech. This case, like *Widmar*, demonstrates the need for the courts and the State not to enforce laws or decisions which purpose is to exclude "religious worship" and "religious speech." In order to implement such exclusion the courts would have to engage in minuscule analysis as to the trendiness and meaning of symbols used by various religious or nonreligious organizations, thus risking greater "entanglement." *See Widmar*, 454 U.S. at 277-78. Like the University in *Widmar*, courts would first need to determine which words, symbols and activities fall within religious speech or worship. This in fact will prove to be "an impossible task in an age where many and various beliefs meet the constitutional definition of religion." *Widmar*, 454 U.S. at 275 n.11; (*quoting O'Hair v. Andrus*, 613 F.2d 931, 936 (D.C. Cir. 1979)).

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[14] "A statutory preference for the dissemination of religious ideas offends our most basic understanding of what the Establishment Clause is all about and hence is constitutionally intolerable." *Texas Monthly*, 489 U.S. at 28. (Blackmum, J., concurring).

The cross embodies religious, political and cultural significance. R.B. 8; *see also* Appendix A. For example, the cross was once a mechanism to punish crime in the form of a death sentence.[15] If individuals today decided to wear an electric chair around their neck instead of a cross because their sectarian leader was sentenced to death, would that then make the electric chair a religious symbol? Petitioners claim that the Latin cross is known as a predominantly religious symbol. P.C. 3, 5 n.1, 6, 9, 16, 17. If the test is whether a symbol is known for being predominantly religious, the religions which are popular and well known and use the Latin cross as their symbol would suffer discrimination as opposed to those which use the Greek cross[16] or the swastika, which are not well known for their religious significance. *See* Appendix A13, A14, A16.

Moreover, the problem with isolating symbols and conveying on them a particularized message is that the message changes according to the beholder. Most individuals would not be able to distinguish among the four hundred forms of the cross.

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[15] The earliest mode of crucifixion seems to have been by impalation, the transfixion of the body lengthwise and crosswise by sharpened stakes, a mode of punishment still well known among the Mongol race. "The usual mode of crucifixion was familiar to the Greeks, the Romans, the Egyptians, Persians and Babylonians. . . . Alexander the Great executed two thousand Tyrian captives in this way, after the fall of the city." Aaron-Golan, *The Illustrated Bible Dictionary* 342-344 (1981) (hereinafter "*Illustrated Bible Dictionary*"). "Crucifixion was practiced by the Phoenicians and Carthaginians and later used extensively by the Romans. Only slaves, provincials and the lowest types of criminals were crucified, but rarely Roman citizens." *The International Standard Encyclopedia* 761 (1939).

[16] The Greek Cross has four arms of equal length. The Red Cross organization makes abundant use of this form of the cross which has been used for centuries in Christian art. "When five Greek crosses appear on the top of an altar, under the fair linen, reference is made to the five wounds of our Lord's crucifixion." Friedrich Rest, *Our Christian Symbols* 19 (1954); *see* Appendix A16.

F.R. Webber, *Church Symbolism* 99-132 (1971). Most viewers would not know that only fifty of those four hundred variations have been used in Christian symbolism. *Id.* In fact, most people would not be able to distinguish a Latin Cross[17] from a Passion Cross,[18] or a Cruz Ansata.[19] *Id.* In fact, many viewers may not recognize a cross if they saw it,[20] or know whether it is a Christian or non-Christian symbol?[21] To label the cross as an exclusive Christian symbol fails to take into account the non-Christian usage of the cross and the definition of the cross. The cross is a sign formed by

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[17] "This form of the cross is appropriate the world over, and may be used by any religious body whose doctrines include the confession of the Lord Jesus Christ and His atoning death." *Church Symbolism* at 99-132; Appendix A1.

[18] "This is a cross whose ends are cut to points. It is also known as the Cross Urdee, and the Cross Champain, sometimes as the Cross Pointed. It represents the sufferings of our Lord, and has been called by some authorities the Cross of Suffering." *Church Symbolism* 109; Appendix A2.

[19] "A cross, supposedly of ancient Egyptian origin. It may be either a Tau cross with a loop above it, or a Latin cross similarly looped. A symbol of life." *Church Symbolism* 111; Appendix A2.

[20] There are about four hundred forms of the cross. Some include the Anchored Cross. This type of cross originated in primitive days in the catacombs, formed by combining an anchor and a cross. This is a symbol of Christian hope. It is also an heraldic cross whose ends are curved outward like the flukes of an anchor. This type of cross resembles more an anchor than a Latin cross; nonetheless, it is still a cross pregnant with religious symbolism. *See Church Symbolism* 99, 110-111; Appendix A5, A8.

[21] The Crux Ansata is also what is known as an Ankh. The origins of this cross precede the crucifixion of Christ. It is customarily placed in a god's or goddess's hand, and is found in temples, tombs, and in old Egyptian inscriptions. *See* Adams, *The Encyclopedia of Religion* 155 (1987) (hereinafter "*The Encyclopedia of Religion*"); Appendix A5, A8.

the meeting of two lines in the center with four directions apart. "The cruciform sign is used in artistic and scientific expression -- in mathematics, architecture, geography and cosmology. It also occupies an important position in culture in a more general sense and, specially, in religion." *The Encyclopedia of Religion* 155-165. "The sign of the cross was well known in the symbolics of various ancient nations. It represents a combination of opposites. The positive (or vertical) with the negative (or horizontal), life with death, the spiritual (vertical) with the worldly (horizontal)." Gertrude Grace Sill, *A Handbook of Symbols and Christian Art* 30-33 (1975) (hereinafter "*Handbook of Symbols*").

For example, among the Egyptians the cross is said to have been a symbol of divinity and eternal life, and to have been found in the temple of Serapis. *The Encyclopedia of Religion* 155-165. Another example is the gammadion. The gammadion is a Greek cross with its ends bent at right angles; four gammas attached to a common base, all pointing either clockwise, to the right, or counterclockwise, to the left. In India it is an ancient solar symbol and is the emblem of the god, Visnu, representing the cosmic wheel spinning on an axis. *Id.* The cross has also been found in the ancient civilizations of Peru. These civilizations have left valuable information on the role of the cross in solar cults. *Id.* "At the time of the conquest of Mexico, the Spaniards discovered many figurations of the cross in temples and manuscripts. For the ancient Mexicans, the world was built on the cross -- the crossroads joining east to west and south to north. Thus, the cross becomes a symbol of world unity." *Id.*

The meaning of the cross and the symbolism it embodies changes according to the observer. For example, among the occult and witchcraft, crosses are seen as the "oldest AMULETS in the world, predating Christianity by many centuries." Rosemary Ellen Guiley, *The Encyclopedia of Witches and Witchcraft* 74-75 (1989).

> In the commonest form of a cross, all four arms are of equal length rather than a T shape. Crosses have been associated with some deities and heavens, and

> in ancient times they may have represented divine protection and prosperity. . . . Even before the crucifixion of Christ, the cross was a weapon against the dark forces. According to legend, when Lucifer declared war upon God in an attempt to assert his power, his armies scattered God's angels twice. God sent to His angels a Cross of Light on which were inscribed the names of the Trinity. Upon seeing this cross, Lucifer's forces lost strength and were driven into hell.

Id.

Using Petitioners' reasoning, the meaning of symbolism depends on who wishes to erect a display. *See* P.C. 16, 17. If a group of fans of the pop singer Madonna wished to erect a cross in Capitol Square in order to celebrate her concert in the area, would that cross be a religious or a secular symbol?[22] Would the symbolism depend on history and trends? Some courts have upheld the phrase "In God We Trust" on the basis that it has lost its secular meaning, and has become a type of civil religion. *Abington School Dist.*, 374 U.S. at 303 (Brennan, J., concurring) (quoting *McGowan*

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[22] As evidenced by magazines and newspapers, Madonna has influenced not only the music industry, but our culture. In an article from *Tikkun* dated September, 1994, the writer explains how Madonna managed to turn the cross into a symbol of sexy rebelliousness and suburban chic.

> As a result of Madonna's "like a virgin" phase, millions of American girls began to buy and wear large crosses as part of a wannabe ensemble. Stores specializing in punk gear started selling vast numbers of large crosses on chains. The cross may still be a powerful symbol of religious belief--as well as a sometimes signifier of oppression--but its categorical authority as a sign of holiness has been challenged by the irreligious, irresponsible force of the mass market. Smith, Buying Power: Thoughts on the "Crisis" of Commodification. *Tikkun* 63 (Sept. 1994).

v. Maryland, 366 U.S. 420, 442 (1961)); *ACLU v. St. Charles*, 794 F.2d 271 (7th Cir. 1986) ("In God We Trust" and Christmas trees are secular and have lost their original religious meaning). Constitutional law should be based on neutral principles and not on the tides of history, fashion, or theological precepts. The Establishment Clause should not be based upon non-neutral principles changing with time in accordance with popular perception. Using the theory that "In God We Trust" is now constitutional because it has lost its religious meaning means that the same phrase would have at one time been unconstitutional, but is now constitutional. It is intellectually dishonest to state that "In God We Trust" is constitutional because it has lost its religious significance. If we move the words around a little bit and stated "We Trust In God," would that then be unconstitutional if placed above the courthouse steps? Accordingly, if the cross becomes, as it has, a secular icon used by rock stars and fashion designers alike,[23] would that then render the cross a civil religion enabling the government to make use of it? This Court stated that "[t]he suggestion that government may establish an official or civic religion as a means of avoiding the establishment of a religion with

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[23] "Along with this blast from the past comes an interesting trend toward religion as fashion. Crucifixes, crosses, ankhs and other icons have become an irreverent fashion. . . . And let's not forget the fashion influence of rock star Madonna whose recent videos have boosted sales of rosary bead necklaces, faux gem-encrusted crosses and ideological pendants. . . . New Age or Old Testament, Religion Has Become a Fashion Accessory." Edelstein, "Fashion Look of the '90s: Simple Comfortable," *Jewelers Circular Keystone* 128 (August 1989) (hereinafter "Fashion Look of the '90s"). "Sacred imagery is pervading the runways. Does this mean we're losing our religion or desperately trying to find it? Ann Demeulemeestei's fall collection was heaven. Literally. Everything came up rosaries and crosses, and high, detachable collars." Szabo, "Fashion's New Crusade: Sacred Images in Fashion," *Harper's Bazaar* 99 (September 1993). "The cross is the jewelry accessory of choice, strung six across (Donna Karan), draped front and back (Richard Tyler) or worn as a simple necklace (Louis Dell'Olio for Anne Klein)." Schupak, "Fall Fashion Forecast: What's Old is Very New," 164 *Jewelers Circular Keystone* 88 (August 1993).

more specific creeds strikes us as a contradiction that cannot be accepted." *Lee v. Weisman*, 112 S. Ct. 2649, 2657 (1992).

Under Petitioners' theory, the State is forced to determine whether (1) the symbol is religious, and if so, (2) has the symbol become secularized to the point of acceptability. Individuals wishing to use symbols of anti-religious significance would also be banned, creating the same entanglement this Court warned against in *Widmar*. 454 U.S. at 277-278; *see also Kiryas Joel*, 114 S. Ct. 248, 2491 (1994); *Wallace v. Jaffree*, 472 U.S. 38, 52-54 (1985). In *Kiryas Joel*, this Court stated that an important principle of the Establishment Clause is "that government should not prefer one religion to another, or religion to irreligion." See *Kiryas Joel*, 114 S. Ct. at 2491.[24] A banner representing an atheist organization would also be excluded. In *Widmar*, this Court warned that to draw distinctions between what religious worship is or is not would require the University -- and the courts -- to inquire into the significance of words and practices to different religious faiths, and in various circumstances by the same faith. 454 U.S. at 269-70.[25]

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[24] The State's actions have the primary effect of inhibiting religion because they selectively excluded religious speech. Petitioner's arguments would allow a swastika to be displayed even though the swastika embodies religious significance. *See* Appendix A13-14. Christians, unlike any other religious group, would have to resort to the same tactics early Christians engaged in desguising their crosses. For example, they would have to display an Anchored Cross (*see* Appendix A5, A8) which is sometimes called a Crux Dissimulata. These crosses, like the fish symbol, (*see* Appendix A17, A19) were intended to conceal their true significance from spies and informers who persecuted the early Christians. *See* Stafford, *Christian Symbolism* 68 (1942).

[25] The dissent in *Widmar* argued that "religious worship" was not speech generally protected by the "free speech" guarantee of the First Amendment and "equal protection" clause of the Fourteenth Amendment. The dissent argued that if "religious worship" was protected speech, then the Establishment Clause would be emptied of its meaning. The Court in *Widmar* responded: "Merely to draw the distinction would require the university -- and ultimately the courts -- to inquire into the significance of

Such inquiries entangle the State with religion in a forbidden manner and will have the primary effect of inhibiting religion. *See, e.g., Walz v. Tax Comm'n. of New York City*, 397 U.S. 664, 668 (1970); *see also Widmar*, 454 U.S. at 269-70 n.6.

To adopt Petitioners' arguments would offend the principles embodied in the Establishment Clause. *See Lemon*, 403 U.S. at 612-613; *Widmar*, 454 U.S. at 271; P.C. 3, 16, 18, 24. First, Petitioners fail to provide a secular legislative purpose compatible with the First Amendment. *See Lemon*, 403 U.S. at 612-613; *Widmar*, 454 U.S. at 271. Second, Petitioners' arguments, if followed, would have the primary effect of inhibiting religion. Finally, Petitioners' arguments would foster "an excessive government entanglement with religion." The best way to resolve the issue before this Court is to adopt the reasoning of the lower court: In an open forum religious expression does not implicate the Establishment Clause.

III.

TARGETING THE KLAN CROSS FOR SELECTIVE EXCLUSION FROM A TRADITIONAL PUBLIC FORUM VIOLATES THE FREE EXERCISE CLAUSE.

The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. *Employment Division, Dept. of Human Res. v. Smith*, 494 U.S. 872, 878 (1990).[26] "The First Amendment Religion Clauses mean that

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words and practices to different religious faiths, and in varying circumstances by the same faith. Such inquiries would tend inevitably to entangle the State with religion in a manner forbidden by our cases." 454 U.S. at 269-70.

[26] The government may not compel religious belief; *see Torcaso v. Watkins*, 367 U.S. 488 (1961), punish the expression of religious doctrines believed to be false; *United States v. Ballard*, 322 U.S. 78, 86-88 (1944), impose special disabilities on the basis of religious views or religious

religious beliefs and religious expression are too precious to be either proscribed or prescribed by the state. The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and choice committed to the private sphere, which itself is promised freedom to pursue that mission. It must not be forgotten then, while concern must be given to define the protection granted to an objector or a dissenting nonbeliever, these same Clauses exist to protect religion from government interference." *Lee v. Weisman*, 112 S. Ct. 2649, 2656-2657 (1992). "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious belief or **regulates or prohibits conduct** because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye v. City of Hialeah*, 113 S. Ct. 2217, 2226 (1993) (emphasis added).[27] "The Free Exercise Clause protects against governmental hostility which is masked as well as overt." *Id.* at 2227. This Court must survey the circumstances of governmental categories to eliminate, as it were, religious gerrymanders. *Id.* at 2227; *see also, Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring). Governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest. *See Sherbert v. Verner*, 374 U.S. 398 (1963); Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb (hereinafter "RFRA").

There are, of course, many ways of demonstrating that the object or purpose of the law is the suppression of religious conduct. One must begin by examining the text of the law. *Church of the Lukumi*, 113 S. Ct. at 2227. However, the record of the case must also be examined to disclose masked governmental hostility. *See id.*

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status; *see McDaniel v. Paty*, 435 U.S. 618 (1978), or lend its power to one or the other side in controversies over religious authority or dogma; *see Presbyterian Church in U.S. v. Mary Elizabeth Bluehull Memorial Presbyterian Church*, 398 U.S. 440, 445-452 (1969).

[27] *See., e.g., Brounfeld v. Brown*, 366 U.S. 599, 607 (1961); *Fowler v. Rhode Island*, 345 U.S. 67, 68-70 (1953).

Like *Church of the Lukumi*, the facts of this case disclose an object remote from legitimate concerns. *Id.* at 2227-2228; *see also* R.B. A14, A17, A20, A22.

The display of the cross is for the Klan a sincerely-held religious (and political) belief. "What principle of lower logic can be brought to bear to contradict a believer's assertion that a particular act is central to his personal faith? Judging the centrality of different religious practices is akin to the unacceptable 'business of evaluating the relative merits of different religions' claims.'" *Smith*, 494 U.S. at 887 (quoting *United States v. Lee*, 455 U.S. 252, 263 (1982) (Stevens, J., concurring)). "It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith or the validity of particular litigants interpretations of those creeds." *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989). Courts must not presume to determine the places or particular belief in a religion or the possibility of a religious claim. *See, e.g., Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 716 (1981); *Presbyterian Church*, 393 U.S. at 450; *Jones v. Wolf*, 443 U.S. 595, 602-606 (1979); *United States v. Ballard*, 322 U.S. 78, 85-87 (1944).

The Klan's purpose in placing a cross with the display was to erect "a symbol for our Lord, Jesus Christ" in furtherance of their more general purpose to "establish a Christian government in America." P.C. 4. The record indicates that the State's purpose in its first ban on all seasonal displays was to exclude the Klan, and the Klan alone, from displaying the cross. R.B. A12, A17, A22. After the ban took place, the government changed its position due to pressure by the community in favor of the menorah and the Christmas tree. R.B. A14, A20. As evidenced by the record, the State's actions were directed at the Klan's free exercise of what it believes to be an essential keystone to its religious belief which it manifests in religious and political speech.

Petitioners are excluding a particular cross which is one of the central symbols of the Klan because it is a religious symbol. In doing so, the State is trying to limit, if not prohibit, the Klan from

freely exercising its religious beliefs in a public forum. One of the Klan's central purposes is to promote Christianity across the United States. P.C. 4. In order for the Klan to accomplish this goal, it has displayed different crosses in different cities across the nation. P.C. 4. Any attempt by the State to deny the Klan's efforts to erect the cross, which is essential to its religious/political beliefs, denies the Klan its Free Exercise protections.

"[B]elief and action cannot be neatly confined in logic tight compartments." *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). "Because the First Amendment does not distinguish between religious belief and religious conduct, conduct motivated by sincere religious belief, like the belief itself, must be at least presumptively protected by the Free Exercise Clause." *Smith*, 494 U.S. at 893 (O'Connor, J., concurring). In the case at hand, because such distinctions cannot be made, there must be at least a presumption that the actions of the Klan in trying to display a cross with a disclaimer which indicated the political and religious purpose of its display must be protected by the Free Exercise Clause. *See Yoder*, 406 U.S. at 220; *Smith*, 494 U.S. at 893 (O'Connor, J., concurring). The First Amendment and RFRA express a mandate requiring the government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest. *See Hernandez*, 490 U.S. at 699; *Smith*, 494 U.S. at 894-895; RFRA 42 U.S.C. § 2000bb. "[O]nly an especially important governmental interest pursued by narrowly-tailored means can justify exacting a sacrifice of First Amendment freedoms as the prize for an equal share of the rights, benefits, privileges enjoyed by other citizens." *Bowen v. Roy*, 476 U.S. 693, 728 (1986) (O'Connor, J., dissenting).

The State's actions in prohibiting the Klan from freely exercising its religious beliefs[28] shows the State's preference of a

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[28] In *Smith*, this Court suggested that this favoring of minority religions is an "unavoidable consequence" under our system of government and that accommodating of such religions must be left to the political process. In response to such an argument, Justice O'Conner stated that the First

religious minority (Jewish) over the religious majority (Christians), or possibly even one minority (Jewish) over another minority (Klan Christianity).[29] The State's actions disavow its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people. For this Court to allow such compromise would be to deny our own tradition and forfeit our standing to urge others to secure the protections of that tradition for themselves. *See Lee*, 112 S. Ct. at 2658.

Minorities as well as majorities have the right to freely exercise their First Amendment rights in a public forum. The "[g]overnment may not interfere with efforts to proselyte or worship in public places." *McDaniel*, 435 U.S. at 640 (Brennan, J., concurring); *see also Kunz v. New York*, 340 U.S. 290, 311-313 (1951). The State's actions discriminate against a majority, Christians, and against the Klan who constitute a minority sect within the majority. Many disagree with the Klan's use of religion and Christianity. The Klan is a prime example of those minorities whose views and beliefs must be protected.

> The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property to free

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Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility. 494 U.S. at 903. At any rate, the Petitioners' actions are far from neutral or general in application.

[29] If any lesson in history has taught us with regard to the Establishment Clause it is that "in the hands of government what might begin as a tolerant expression of religious views may end in a policy to endoctrinate us. A state-created orthodoxy puts at risk that freedom of belief and conscience which are the sole assurances that religious faith is real, not imposed." *Lee*, 112 S. Ct. at 2658.

> speech, and free press, freedom of worship and assembly, and other fundamental rights may not be substituted to vote; they depend on the outcome of no elections.

Barnette, 319 U.S. at 638.

Bowing to public pressure because of disagreement with the Klan's message is to regulate religious belief and practice to majority vote. The majoritarian approach which the State took in this case is a blatant violation of the First Amendment.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals for the Sixth Circuit should be affirmed.

Respectfully submitted,

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APPENDIX A

VARIATIONS OF THE CROSS



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[1] *The Graded Cross*: "This is a Latin cross, the vertical member eight to ten squares high and the horizontal member five to seven squares long. It stands up on a base composed of three steps, hence its name. The lowest step represents Charity, the broadest and greatest of the three Theological Virtues, the second step denotes Hope, without which Charity avails little. The highest step is Faith, and is placed next to the cross to express the fact that Faith is the gift of the Crucified Lord, and not a thing of men's own creating. This graded cross, somewhat more slender than the proportions indicated above, is often used upon the altar." Webber, *Church Symbolism* 103 (1971).

[2] *Saint Peter's Cross*: "According to legend, Saint Peter died on an inverted cross. By his request, he was crucified head downward, not considering himself worthy to be crucified in the same position as his Lord." *See* Roch, *Book of Signs* 14 (1955); *see also* Stafford, *Christian Symbolism* 96 (1942).

[3] *The Latin Cross*: "This form of this cross is appropriate the world over, and may be used by any religious body whose doctrines include a confession of the Lord Jesus Christ and His atoning death. It is the actual form of the cross upon which the Savior died, and it is safe to use it almost anywhere. It is not as the Crux Immissa. A cross of satisfactory proportions may be made by cutting twelve perfect squares out of cardboard." The squares will be arranged as follows: "Eight squares high and five squares wide." Anything thicker than that is clumsy. *Church Symbolism* 100-101.



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[4] *Passion Cross*: "This is a cross whose ends are cut to points. It is also know as the Cross Urdée, and the Cross Champain, sometimes has the Cross Pointed. It represents the suffering of our Lord, and has been called by some authorities the Cross of Suffering. It is pictured as rising out of a chalice, it represents our Lord's agony in the Garden Gethsemane. It may be used as a symbol of Good Friday. *Church Symbolism* 108.

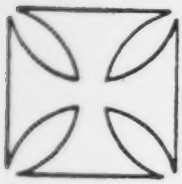
[5] *Latin Cross Fimbriated*: Another decorated form of the Latin cross. *Id.* at 130.

[6] *Latin Cross Fleurée*: "Latin cross which all ends terminate in leaf-like ornaments suggesting the fleur-de-lys." *Church Symbolism* 130.

[7] *Crux Ansata or the Cross Ankh*: "A cross, supposedly of ancient Egyptian origin. It might be either a Tau cross with a loop above it, or a Latin cross similarly looped. A symbol of life." *Id.* at 110-111.



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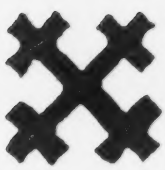
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[8] *The Tau Cross*: "This is sometimes called the Old Testament Cross, the Anticipatory Cross, the Cross Commissée, the Egyptian Cross, the Advent Cross, or Saint Anthony's Cross. It is said to be the true form of the cross raised up by Moses in the wilderness. In Roman times it was called the Crux Commissa. It is merely a Latin cross minus its upper arm. In Christian painting, the two thieves are shown hanging up on this type of cross. Saint Anthony and Saint Matthew are both said to have died upon such a cross and it is used as symbols of these two martyrs. In paintings of the Crucifixion, Dismas is shown upon our Lord's right and Gesmas upon his left, both hanging up on Tau crosses. The Tau Cross is the cross of prophecy, and the uplifting of the serpent of Moses is a type of our Lord Jesus Christ. Hence this cross is used upon the violet ultra and pulpit hanging for the Advent season and upon printed matter announcing the special Advent services of the church. It is one of the very oldest ones of the cross." *Id.* at 101, 104.

[9] *Cross Patée*: "One of the most beautiful and most widely used forms of the decorative cross. Its four arms curve outward, and its outer edges are straight. Many variations of this cross exist. If each outer edge is pointed, it is a Cross Patée Fitched. If the outer edges curved outward, it is Cross Patée Convex. If they curved inward, it is called the Cross Patée Concave. If scalloped, it is the Cross Patée Invected. If the sign is within a circle, it is a Cross Alisée Patée. If the design is large, the Cross Patée out to be shown in outline only." *Id.* at 122-123.

[10] *Cross Recercelée*: "Similar to the Cross Moline except that the curved ends are rounded instead of pointed." The Cross Moline is "[a] decorative form of the cross, with arms ending in two petals." *See Church Symbolism* 126.



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[11] *Saint Julian's Cross*: "The Cross Crosslet Saltire is a cross shaped like the letter X. Each arm ends on a Latin Cross. *Church Symbolism* 126-127; *see also* note 30.

[12] *Saint Chad's Cross*: "The Cross Potent Quadrate." *Church Symbolism* 103; *see also* note 40.

[13] *Quarterly Pierced*: "A cross with a square held the full width of the arms, at the intersection of its arms." *Church Symbolism* 124.



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[14] *Cross Barbée*: "A Cross whose ends resemble the barbs of fish hooks or fish spears. Symbolical of ICHTHUS symbol of our Lord. Also suggestive of the idea of 'fisher of men.'" *Church Symbolism* 103.

[15] *Anchored Cross*: "A form of the cross, originating in primitive days in the catacombs, formed by combining an anchor and a cross. The symbol of Christian hope. Also an Heraldic Cross whose ends are curved outward like the flukes of an anchor." *Church Symbolism supra* note 1.

[16] *Cross Wavy*: "An Heraldic Charge, occasionally used in church decoration. Its arms are of a slight undulating character, like conventionalized waves of the sea." *Id.* at 128-129.

[17] *Cross Vair*: "A cross composed of four figures, each one roughly resembling a bell. It derives its name from the Heraldic Fur called Vair." *Id.* at 128-129.



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[18] *Cross Quadrate*: "A cross with a square at the intersection of its arms." *Id.* at 124-125.

[19] *Cross Ragulée*: "A cross with protrusions on its four arms, said to suggest knots and looped-off branches of a tree. A Knotted Cross." *Id.* at 124, 126.

[20] *The Cross Fleury (also spelled Fleurie)*: "A form having four arms of equal or unequal lengths, with pointed petal-like ends." Rest, *Our Christian Symbols* 22 (1959).

[21] *Cross Voided*: "Includes any cross, shown in outline only, so that the color of the field or background shows through it, it is called a Cross Voided." *Church Symbolism* 128-129.

[22] *Greek Cross Fimbriated*: "Another decorative variation of the Greek Cross in which a Greek Cross is superimposed over a bigger voided Greek Cross." *See Church Symbolism* 128; *see also supra* note 6.



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[23] *Symbol for Obscure Species*: Incorrect citation; dagger; death. *See* Dreyfuss, *Symbol Sourcebook: An Authoritative Guide to International Graphic Symbols* 221 (1972).

[24] *Treparted Flurée*: "A cross of three parallel vertical members and three parallel horizontal ones, and with all ends terminating in leaf-like ornaments suggesting the fleur-de-lys." *Church Symbolism* 128-129.

[25] *Cross Chapiteau - The Cross Capital*: "A cross, derived from heraldry, and now used decoratively, whose limbs terminate in architectural form suggesting the capitals of columns." *Id.* at 111, 113.



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[26] *Symbol for the Reception of Cadavers*: This symbol is made by a Latin Cross superimposed over a Greek Cross. *See Symbol Sourcebook* 221.

[27] *Symbol for Injections or Vaccinations*. *Id.*

[28] *Symbol for Pharmacy*. *Id.*

[29] *A, B, C, D, Four Variations of the Ancient Anchor Cross*: "When the top part of an anchor is in the shape of a cross, it is called an Anchor Cross, a symbol of Jesus Christ, our sure Anchor. This cross is carried over from the days of persecution before Constantine, when Christians were able to see Christian hope in the Anchor, while non-Christians saw nothing but an anchor. An anchor is a symbol of hope 'sure and steadfast' (Hebrews 6:19)" Rest, *Our Christian Symbols* 20 (1954).



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[30] *St. Andrew's Cross; or Saltiere*: Saint Andrew is said to have been crucified upon such a cross. Also known as the Crusata, Saint Patrick's Cross and Saint Alban's Cross. Numerous variations of the Cross Saltire exist, such as the Cross Saltire wavy, Cross Saltire Patée, Cross Saltire Invected, Cross Saltire embattled, Cross Potent Saltire, etc. "Upon which St. Andrew suffered a martyr's death. Also called the Crux Decussata. The boundary cross of the Romans, derived from the cross used by them as a barrier. *See Church Symbolism* 104-105, 126-127.

[31] *The Cross of Iona*: The Celtic, or Irish Cross. Which combined the Latin Cross with the circle, the symbol of eternity. This type of cross was first made in Ireland in about the fifth century, by men converted by St. Patrick. They carved great blocks of stone into the bold design of the cross and circle. Fine examples are found on the island of Iona. *See* Fritz, *The Use of Symbolism in Christian Education*. "Some years ago when Protestant bodies were afraid to use a true Latin Cross, due to some fancied association with Rome, many crudely designed Celtic Crosses might have been seen on a church spire. Such crosses were described most aptly by a wag as 'disguised crosses.'" *Church Symbolism* 105-107.

[32] *Six-branched Cross*: this cross can be found in the form of a Latin or Greek Cross. *See* Hangen, *Symbols . . . Our Universal Language* 12 (1962).



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[33] *Cross Botonnée or TreFlée*: Also known as the Cross Bourdonee. "A very beautiful form, either Greek or Latin in design whose ends terminate in trefoils. Once commonly stamped on the covers of hymnals, it is now used widely where a decorative form of the cross is desired. It is often used in cornerstones." *See Church Symbolism* 111-112.

[34] *Easter Orthodox Cross*: "Within recent years, many churches have been erected with a cross on their spires composed of a vertical and two horizontal arms, and a third arm placed in slanting position. Such a cross may be used only by the Eastern Church, and its presence upon a spire or a dome signifies that the congregation is a member of the Eastern Orthodox Church." *Id.* at 105.

[35] *Patriarchal Cross*: "In many paintings, and often in stained glass windows, certain patriarchs are shown carrying a cross with two horizontal arms, the upper one slightly shorter than the lower one. This is known as the Patriarchal Cross. The upper arm represents the head of the Savior when He was crucified." *Id.* at 105, 107.



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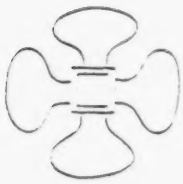
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[36] *Papal Cross*: "In a little town in Easter, Pennsylvania, may be seen a church with twin spires, each which is crowned with a cross having three horizontal arms, each a little longer than the other. This is a curious blunder, for such a cross is known as the Papal Cross. It is the cross carried before the Roman pontiff, and may be used by none other, for it is a distinctive mark of his office." *Church Symbolism* 107.

[37] *Cross Lorraine*: "Similar to the Patriarchal Cross, except that the longer bar is near the base. The cross of the Holy League." *Id*. at 121.

[38] This cross, either attached or detached, is found hewn in the stone or painted on the walls of Roman Catholic churches, denotes that they have been consecrated. *See The Book of Signs* 24-27.

[39] *Sixteen Pointed Cross*: A cross whose four ends each terminate in four points, resembling the teeth of a saw." *Church Symbolism* 128.



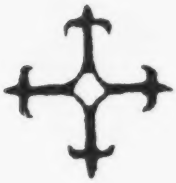
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[40] *The Canterbury Cross*: "A cross with four hammer-like arms which spring from a square." *Church Symbolism* 112.

[41] *Maltese Cross*: "A cross resembling four spear heads with the points touching. The eight outer points of this cross must all be equidistant from one another. It is a well known symbol of the Eight Beatitudes, and is called the Regeneration Cross. Also the symbol of St. John's Day. It was worn by the Knights Hospitallers, ~~or~~ Knights of St. John of Jerusalem. It must not be confused with the Cross Patée." *Id.* at 121-122.

[42] This cross is closely related to the cross voided, or gamadia. It is "the beautiful badge of the German gymnastic clubs: composed of four "F's" standing for, Frisch, Fromm, Frohlich, Frei." (Hardy, godfearing, cheerful and free) *Book of Signs* 19.

[43] *Cross Voided in Center*: Latin or Greek cross in which its center is shown in outline only. *Church Symbolism* 128.



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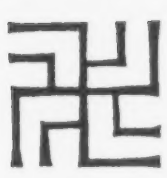
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[44] *Cross Potent*: "Also known as the Jerusalem Cross. Four Tau crosses whose lower ends meet. Called Cross Potent because of its resemblance to an ancient crutch. A very fine form, and symbolical of the Savior's power to heal the diseases of men's bodies and souls." *Id.* at 125.

[45] Symbol for "vinegar," "Cross Joint," and "Threaded." *Symbol Sourcebook* 221.

[46] *Cross Cramponée*: "A Cross Potent with a part of each termination missing. Similar to the swastika, except that the return arms are shorter." *Church Symbolism* 115.

[47] *Swastika Cross, Rebated Cross*: The FylFot, or Swastika. A cross of extremely ancient origin, each arm of which is bent at right or left angles. "It is believed by some to have symbolized the four cardinal points of the compass. This form of cross was known to many non-Christian races." *Church Symbolism* 126; *see also*, *Symbols . . . Our Universal Language* 12.



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[48] Elaborated form of the Swastika. *The Book of Signs* 18.

[49] Derived from the sun wheel by breaking the circumference of the circle. Amongst the early Christians, this, as well as many other symbols, including the Swastika Cross, "was used as a disguised cross during the persecution of the Christians. Hence its name Crux dissimulata. It was also called Crux gammata, from the fact of its being made up of four Greek gammas." *The Book of Signs* 18.

[50] *Roman Sacred Cross*. *Id*. at 19.

[51] *Cross Moline*: "A decorative form of the cross, with arms ending in two petals." *Church Symbolism* 122.

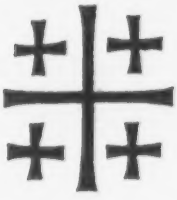
[52] *The Cross Millrine*: "A cross whose ends resemble somewhat the clamp on the upper millstone." *Id*.



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[53] *Cross Cercellée*. "Somewhat like the Anchored cross, except that its curved ends resemble a ram's horn." *Id.* at 113.

[54] *Cross Pommée*: "A cross whose arms end in single knobs." *Id.* at 124-125.

[55] *Cross Cantonnée*: "Any large cross closely surrounded by four smaller ones of similar design, is called a Cross Cantonnée." *Id.* at 113.

[56] *Cross Patée Fitchée*: Three of its four arms curve outward and its fourth lower arm is drawn out to a sharp point, it is said to be fitched, or pointed. "This form is said to be originated at the time of the Crusaders, when the Crusaders carried small crosses with pointed lower arms, capable of being thrust into the ground at the time of daily devotions." *Id.* at 117-118.



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[57] *Coptic Cross with the Four Nails*. *The Book of Signs* 20.

[58] *Greek Cross; Cross-Channel Fair-way; Left Bank; Red Cross*: *Symbol Sourcebook* 221; *Church Symbolism* 101, 103.

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RELIGIOUS SYMBOLS



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[59] "The third member of the Godhead, the Holy Spirit, has been most often represented by the descending dove mentioned in the Baptism of Jesus (Matthew 3:16-17)." Fritz, *The Use of Symbolism in Christian Education* 26 (1952).

[60] "The Fleur-De-Lys has been used to represent the Trinity." *Id.* at 25.

[61] "Among the earliest symbols . . . were those of identification; marks by which, without danger, Christians might recognize their brothers in the faith. The most familiar of these is ICHTHUS - the fish. In the Greek the first letters of the phrase 'Jesus Christ, Son of God, Savior' formed the word 'fish.' The fish was often in the form of a dolphin." *Id.* at 16.

[62] "The equilateral triangle often appeared in the catacombs as a symbol of this triune God - Father, Son, and Holy Spirit, three in one, equal, eternal." *Id.* at 25.

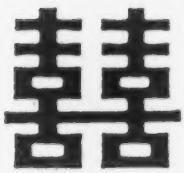
[63] The trefoil was also used to symbolize the trinity. *Id.*



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[64] "A cross divides a section into four parts, and in each part are placed two letters. In the upper left corner are the letters IC, which abbreviate the name Jesus. In the upper right corner are the letters XC, which stand for the name of Christ. In the left corner below the horizontal bar of the cross the letters NI, and in the lower right corner, KA. The letters IC XC NIKA stand for 'Jesus Christ conquers.' Since they are around the cross one may add, 'by the cross.'" *Our Christian Symbols* 7.

[65] Symbol for Hinduism, or Mandala. *Symbol Sourcebook* 221.

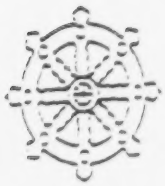
[66] Symbol of Confucianism representing conjugal bliss. *Id.* at 138.

[67] Symbol of Christianity. Anchor; St. Clement. *Id.* at 138.

[68] *The Chi Rho Symbol*: An ancient monogram of Christ. *Our Christian Symbols* 6.



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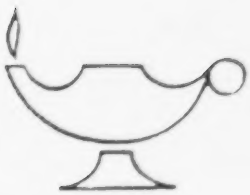
[69] *Christian Symbol, "Triquetra:"* "[A] design consisting of three equal arcs, is also used as a symbol for the Holy Trinity. Its beauty as an architectural design may be seen on some church buildings. Its richness may be noted in that half the length of each pair of arcs forms a *vesica piscis* (bladder of a fish)." *Id.* at 16-17.

[70] Symbol representing the "Wheel of Law" in Buddhism. *Symbol Sourcebook* 138.

[71] Christian Symbol of the Holy Grail inn reference to eternal life. *See The Use of Symbolism in Christian Education* 17.

[72] Christian symbol: Jesus the Lamb of God (John 1:29). *Id.*

[73] Christian Symbol of Identification (supra note 61) used to mark a house in which the Lord's Supper was to be secretly celebrated. *Id.* at 16.



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[74] Christian Symbol in reference to John 8:12, "Again Jesus spoke to them, saying, 'I am the light of the world; he who follows me will not walk in darkness, but will have the light of life.'" *Id.* at 18. Also representing the Bible. *Our Christian Symbols* 28.

[75] Tibetan Buddhist symbol representing "The Path of Universality." *Symbol Sourcebook* 138.

[76] Symbol of Christianity monogram representing Christ. *Our Christian Symbols* 5-6. Also represents the Son of Righteousness. *See* Stafford, *Christian Symbolism* 37 (1942).

[77] Christian Symbol representing the Gethsemane. *Id.* at 62.



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[78] "The eagle denotes the evangelist John. The spirit of the gospel of John, formerly thought to have been written by John the apostle, is like an eagle soaring to the throne of grace." *Our Christian Symbols* 35-36.

Crosses in Government Decoration[79]

United States	Distinguished Service Cross of the Army (square cross circled with the sign of eternity and carrying at its center an eagle); see supra note 58, 78.
	Navy Cross (resembles the Canterbury or consecration cross, squared with rounded ends, and having bundles of light rays, signifying immortality, shooting from the intersection of its arms)[80]
	Distinguished Flying Cross (reminiscent of the Bethlehem cross, is a cross pattee with squared-off bundles of light, carrying on its upper surface a square cross formed by the propellers of an airplane)[81]
Germany	German Iron Cross
	Hitler's Mothers' Cross
England	The cross of the British Champlains' Corps (embodies three crosses, including a Maltese and a round-ended square cross surrounded by the words, "In This Sign Conquer")[82]

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[79] Miller, *A Treasury of the Cross* 17-18 (1956).

[80] *See supra* note 40 and accompanying text.

[81] *See supra* note 9 and accompanying text.

[82] *See supra* note 41 and accompanying text.

British civilian Orders of Knighthood, such as "The Most Noble Order of the Garter" (usually incorporates a cross on their badges)

Crosses in Flags[83]

United States	The Confederate flag (carried the X-shaped St. Andrew's cross)[84]
Great Britain	Union Jack of Great Britain (carries the X-shaped St. Andrew's cross, with the X-shaped St. Patrick's cross-re on white-, as well as a square cross intersecting it)[85]
Norway	Unequal-armed blue cross on a red field.
Greece	Square Greek cross in white against a blue field.[86]
Switzerland	Square white cross, reverse of the Red Cross symbol.[87]
Finland	Incorporates crosses on its merchant flag.
Sweden	Incorporates crosses on its man-of-war flag.

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[83] *Book of Signs* 18-19.

[84] *See supra* note 30 and accompanying text.

[85] *See supra* note 30 and accompanying text.

[86] *See supra* note 58 and accompanying text.

[87] *See supra* note 58 and accompanying text.

Crosses in the Philately[88] of Nations[89]

Italy	1926 & 1929 (crosses are seen among Romulus, Remus, and the wolf of Rome)
	1932 (crosses appear one in conjunction with the dome of St. Peter's, and one circled cross embodying angel wings)[90]
Latvia	1926 & 1929 (Eastern crosses are seen on their stamps)[91]
Lithuania	1926 & 1929 (Eastern crosses are seen on their stamps)[92]
Rumania	1935-36 (Rumania included a Christian cross in her stamp designs)
Portugal	1935-36 (Portugal included a Christian cross in her stamp designs.)
Spain	1930 (Spain issued a dramatic stamp showing a huge-sailed galleon protected by the cross)
New Caledonia	(From time to time issued cross-bearing stamps)
New South Wales	(From time to time issued cross-bearing stamps)

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[88] Philately: "The collection and study of postage stamps and related materials." *The American Heritage Dictionary* 515 (2d ed. 1983).

[89] *Book of Signs* 19-20.

[90] *See supra* note 38 and accompanying text.

[91] *See supra* note 34 and accompanying text.

[92] *See supra* note 34 and accompanying text.

Nicaragua	(From time to time issued cross-bearing stamps)
Peru	(From time to time issued cross-bearing stamps)
Czechoslovakia	1929 (Issued a stamp on which a cross bears witness to the Christian faith of that country)
Greece	1913 & 1922 (During the years of occupation Greece placed crosses on stamps)
Germany	1934 (Germany printed a stamp emblazoned with the swastika, the hooked cross used by Nazism as its symbol)[93]
French Equatorial Africa	1938 (Placed a form of the Christian cross on a stamp)
Belgium	(A valuable Belgium stamp carries a double-barred Lorraine cross on the shield of a horse-mounted Crusader to commemorate the leader of the First crusade, Godfrey de Bouillon, who sold his castle in the valley of the Semolis and left his possessions to follow Christ.)[94]

[93] *See supra* note 46-49 and accompanying text.

[94] *See supra* note 37 and accompanying text.

APPENDIX B

STATEMENTS OF INTEREST OF AMICI CURIAE

Liberty Counsel is a nonprofit civil liberties education and legal defense organization. Liberty Counsel concentrates on providing education and legal defense involving freedom of speech, freedom of religion, and church-state relations.

The issue before this Court has far-reaching ramifications for free speech, free exercise of religion, and the Establishment Clause. Liberty Counsel is concerned that a ruling prohibiting the Klan from displaying their cross in an open forum would have a devastating effect on religious speech. Though not in agreement with the tenets promoted by the KKK, Liberty Counsel believes that the Klan has the right to express its ideas, no matter how abhorrent, as any other group society may deem acceptable.